

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE DANIEL RAMIREZ,

Defendant.

CR 19–26–M–DWM

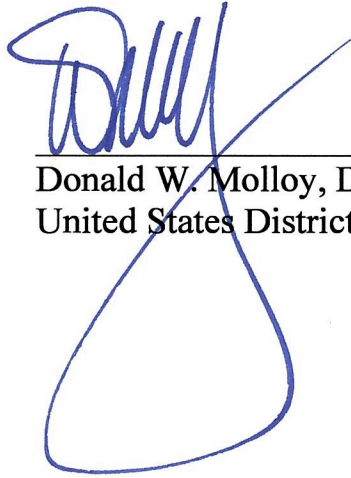
ORDER

On June 16, 2020, Defendant Jose Daniel Ramirez entered guilty pleas to Count I of the Indictment, charging him with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and Count II of the Indictment, charging him with being a user addicted to controlled substances in possession of a firearm, in violation of 18 U.S.C. § 922(g)(3). Under *Ohio v. Johnson*, 467 U.S. 493 (1984), and *United States v. Davenport*, 519 F.3d 940 (9th Cir. 2008), Ramirez cannot be sentenced on both counts of conviction. *Davenport* instructs that his conviction must be vacated “on one of the two counts, allowing for it to be reinstated without prejudice if his other conviction should be overturned on direct or collateral review.” 519 F.3d at 948. The decision on which conviction to vacate

is in the Court's discretion. *United States v. Hector*, 577 F.3d 1099, 1103 (9th Cir. 2009).

Accordingly, IT IS ORDERED that Ramirez's conviction on Count II, User Addicted to Controlled Substances in Possession of Firearm in violation of 18 U.S.C. § 922(g)(3), is VACATED. Ramirez will be sentenced on Count I only.

DATED this 12th day of August, 2020.

A handwritten signature in blue ink, appearing to read 'Donald W. Molloy', is written over a horizontal line. Below the line, the text 'Donald W. Molloy, District Judge' and 'United States District Court' is printed. A large, loopy blue mark is drawn below the printed text.

Donald W. Molloy, District Judge
United States District Court